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**Gallatin, TN 37066**

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OFFICE OF GENERAL  
COUNSEL

**VIA EXPRESS MAIL**

**RE: Complaint against Power of Liberty Inc.**

**Dear Acting General Counsel Petalas:**

I am a resident, citizen, and registered voter in the Sixth Congressional District. This letter details, upon information and belief, a potential violation of the Federal Election Campaign Act of 1971, as amended ("FECA"), and Federal Election Commission ("FEC") Regulations. With this original, I am enclosing three copies.

### **Facts at Issue**

**Power of Liberty Inc. ("Power of Liberty"), is a Tennessee non-profit corporation<sup>1</sup> organized under section 501(c)(4) of the Internal Revenue Code.<sup>2</sup> On or around June 27, 2016, Power of Liberty contracted with a variety of radio stations in Tennessee's Sixth Congressional District to broadcast certain advertisements<sup>3</sup> ("Advertisements")**

<sup>1</sup> TENNESSEE SECRETARY OF STATE, *Filing Information*, Power of Liberty Inc., available at <https://tnbear.tn.gov/Ecommerce/FilingDetail.aspx?CN=139155096101164166254078100083150060250152189118>.

<sup>2</sup> *About Us*, POWER OF LIBERTY INC., <http://www.powerofliberty.us/about-us.html> (last visited July 18, 2016).

<sup>3</sup> See Joey Garrison, *Diane Black camp slams Joe Carr over ads from 'dark money group'*, Tennessean (July 14, 2016 6:01 PM), <http://www.tennessean.com/story/news/politics/2016/07/14/diane-black-camp-slams-joe-carr-over-ads-dark-money-group/87060492/>.

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from June 27, 2016 until August 3, 2016.<sup>4</sup> The total amount expended by Power of Liberty for these Advertisements is \$67,422.<sup>5</sup> Power of Liberty is expending approximately \$1,774.26 per day to broadcast these Advertisements.<sup>6</sup> These Advertisements specifically target Congressman Diane Black and repeatedly mention her by name.<sup>7</sup> Black represents Tennessee's Sixth Congressional District and is a candidate for reelection in 2016.<sup>8</sup> Tennessee's congressional primary election will be held August 4, 2016.<sup>9</sup> Partisan primaries for the United States House of Representatives, including that race in which Mrs. Black is running, appear on the ballot in the August 4 congressional primary.

Due to the timing of the primary election, these Advertisements have constituted "electioneering communications" under federal law since July 5, 2016. Power of Liberty's aggregate expenditures on electioneering communications reached \$10,645.56 on July 10, 2016.<sup>10</sup> All Advertisements contain disclaimers styled under the FEC's disclaimer rules.<sup>11</sup> As of the date of this letter, Power of Liberty has not filed any electioneering communications disclosure reports with the FEC.

### **Violation of Law**

Upon facts, information and belief, the undersigned alleges that Power of Liberty Inc., has failed to disclose its electioneering communications to the Federal Election Commission as required by Federal law. 52 U.S.C. § 30104 (f); 11 C.F.R. §§ 100.29, 104.20.

<sup>4</sup> See FEDERAL COMMUNICATIONS COMMISSION, *Licensing and Databases: Public Inspection Files*, available at <https://publicfiles.fcc.gov>. WAEW-AM, WCSV-AM, WPBX-FM, WOWF-FM: \$13,422; WWTN-FM: \$32,500; WSM-FM: \$10,750; WKDF-FM: \$10,750.

<sup>5</sup> See FEDERAL COMMUNICATIONS COMMISSION, *supra* note 4.

<sup>6</sup>  $\$67,422 \div 38 \text{ days} = \$1,774.26 \text{ per day}$ .

<sup>7</sup> See Exhibit A; Exhibit B.

<sup>8</sup> See DIANE BLACK FOR CONGRESS, <http://votedianeblack.com> (last visited July 20, 2016).

<sup>9</sup> 2016 Congressional Primary Dates and Candidate Filing Deadlines for Ballot Access, FEC (Apr. 21, 2016). Tennessee's congressional primary is scheduled to be held on August 4, 2016.

<sup>10</sup> Power of Liberty is expending approximately \$1,774.26 per day to broadcast these Advertisements.  $6 \times \$1,774.26 = \$10,645.56$ . July 10 is the sixth day following July 5, when Power of Liberty's Advertisements became electioneering communications.

<sup>11</sup> See Exhibit A; Exhibit B.

## **Analysis**

### **I. Power of Liberty's Advertisements Constitute Electioneering Communications**

Power of Liberty's Advertisements targeting Congressman Diane Black clearly constitute electioneering communications. Federal law defines an "electioneering communication" as any "broadcast, cable, or satellite communication" that references a "clearly identified" Federal candidate, is distributed "within 30 days before a primary . . . election" and is "targeted to the relevant electorate." 11 C.F.R. § 100.29 (a). "Broadcast, cable, or satellite communication" includes any communication publicly distributed via a radio station. 11 C.F.R. § 100.29(b)(1). Power of Liberty's Advertisements easily satisfy all prongs of this test. First, the Advertisements are broadcast over radio and Congressman Diane Black is clearly identified by name multiple times.<sup>12</sup> Next, the Advertisements have aired continuously since June 27, 2016. Tennessee's electioneering communication window began on July 5, 2016, in advance of the August 4 congressional primary election.<sup>13</sup> Finally, the Advertisements are clearly targeted at the relevant voters: Power of Liberty has reserved airtime for these Advertisements through August 3, 2016—the day before the primary election—only on stations that reach voters in Tennessee's Sixth Congressional District.<sup>14</sup> Unquestionably, Power of Liberty's Advertisements constitute "electioneering communications" under Federal law.

### **II. Power of Liberty Has Failed to Disclose its Electioneering Communications, as Required by Federal Law**

Power of Liberty has failed to disclose any of its electioneering communications to the Federal Election Commission, as required by Federal law. Federal law requires those whose expenditures on the "direct costs of producing or airing electioneering communications" aggregate more than \$10,000 annually to file disclosure reports with the Federal Election Commission no later than 24 hours after the electioneering communication is publicly distributed. 52 U.S.C. § 30104 (f); 11 C.F.R. §§ 100.20 (b),

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<sup>12</sup> See *Power of Liberty Inc.*, *supra* note 8. See also Exhibit A.

<sup>13</sup> See FEDERAL COMMUNICATIONS COMMISSION, *supra* note 4.

<sup>14</sup> See FEDERAL COMMUNICATIONS COMMISSION, *supra* note 4.

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104.5 (j), 104.20 (b). As described above, Power of Liberty's Advertisements clearly constitute electioneering communications. Power of Liberty has spent at least \$67,422 to purchase airtime on numerous radio stations in Tennessee's Sixth Congressional District in order to air these Advertisements, with at least \$53,227.89 attributable to Advertisements aired on or after July 5, 2016, the beginning of the electioneering communications window.<sup>15</sup> Even without including the unknown amount of funds Power of Liberty spent to produce the professionally narrated Advertisements, Power of Liberty exceeded the \$10,000 reporting threshold by July 10, 2016 at the latest, when its aggregate electioneering communications expenditures reached at least \$10,645.56.<sup>16</sup> Despite Power of Liberty's publicly reported<sup>17</sup> electioneering communications expenditures exceeding the reporting threshold, Power of Liberty has failed to file *any* electioneering communications disclosure reports with the FEC. This is in spite of the Advertisements' inclusion of FEC disclaimers, which demonstrates Power of Liberty's knowledge of its responsibilities under the law. Power of Liberty plainly meets the reporting threshold and is required by Federal law to disclose its electioneering communications to the Federal Election Commission in a timely fashion.

### **Conclusion**

Based on the foregoing, the undersigned requests that the Federal Election Commission immediately investigate this allegation and impose all necessary and appropriate penalties.

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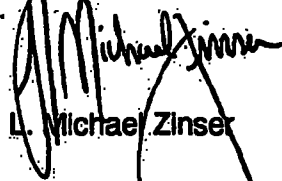
<sup>15</sup> See FEDERAL COMMUNICATIONS COMMISSION, *supra* note 4. \$14,194.11 of Power of Liberty's \$67,422 contracted expenditure was exhausted by July 4, 2016.

<sup>16</sup> See *supra* note 10.

<sup>17</sup> See Garrison, *supra* note 3.

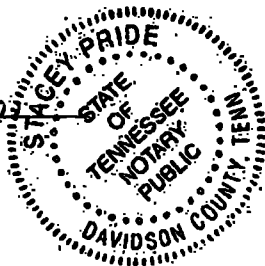
Sworn pursuant to 18 U.S.C. § 1001.

Respectfully submitted,

  
L. Michael Zinser

Subscribed and sworn before me this 25<sup>th</sup> day of July, 2016, by Stacey Pride.

Stacey Pride  
Notary Public



January 6, 2020  
Commission Expiration

### **Exhibit A**

18-year incumbent, career politician Diane Black says Congress is full of hot air from politicians who say the right thing but don't do the right thing. That's exactly what *she* does. Diane Black says 'she voted against the Boehner-Obama budget' but the *Congressional Record* shows she voted for it. She says 'she voted against the crony capitalism at the Ex-Im Bank' but the Heritage Action scorecard shows she voted *for* it—twice! She says 'she voted against higher spending and debt' but the truth is that our national debt has increased by over six trillion dollars since she's been in Congress thanks to her votes for more spending and higher debt. She says 'she helped write the law requiring accountability metrics in border security,' but her voting record shows she voted to give driver's licenses to illegal aliens. Call 18-year career politician Diane Black at (202) 225-4231. Tell her to stop spewing congressional hot air and tell the truth. Career politician Diane Black's record makes one thing clear: she's not the solution to the problems in Washington, she *is* the problem. Paid for by Power of Liberty Inc. powerofliberty.us. Not affiliated with nor approved by any campaign or campaign committee.

*Untitled Power of Liberty Inc. Radio Advertisement*, Power of Liberty Inc. (June 27, 2016), reproduced in *Diane Black ad by Power of Liberty*, TENNESSEAN (July 14, 2016), <https://soundcloud.com/tennessean/diane-black-ad-by-power-of-liberty>.

**Exhibit B**

[UNINTELLIGIBLE] politicians like Diane Black is double talk. The border remains unsecured and the illegals continue to come. Call Diane Black today. (202) 225-4231. Tell her we need more than just tough talk on immigration, we need action. Be sure to ask her if she's so tough on illegal immigrants, why'd she vote to give illegals Tennessee driver's licenses? Paid for by Power of Liberty Inc. powerofliberty.us. Not approved by any candidate or candidate committee. Conservative Joe Carr is standing firm against the Washington establishment. While professional politicians talk tough about illegal immigration, Joe Carr has taken action to secure our borders, preserve our jobs, and protect our communities. As a legislator, he wrote and passed bills to block sanctuary cities in Tennessee and to require verification of legal status to get a job or taxpayer benefits. Call Joe Carr today. (615) 200-0681. And thank him for standing firm against the Washington insiders who refuse to secure our border and enforce our laws.

*Untitled Power of Liberty Inc. Radio Advertisement, Power of Liberty Inc. (June 27, 2016).*